

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Brady Wind, LLC
Brady Wind Energy Center – Stark County
Siting Application

Case No. PU-15-690

Brady Wind, LLC
230kV Transmission Line – Stark County
Siting Application

Case No. PU-15-797

AFFIDAVIT OF SERVICE BY REGULAR OR ELECTRONIC MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Geralyn R. Schmaltz deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **27th day of May, 2016**, she deposited in the United States Mail, Bismarck, North Dakota, **17** envelopes by first class mail, fully prepaid and **50** addressees electronically mailed a copy of:

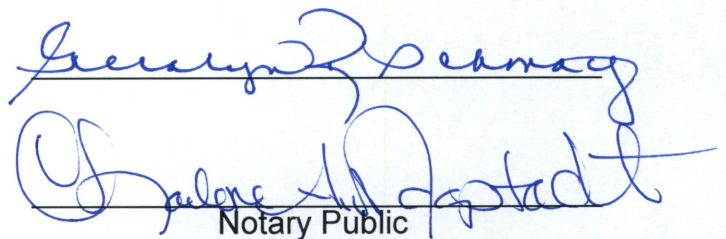
Notice Of Intent To Consider Information Not Presented At A Hearing

The envelopes and electronic mails respectively were addressed as follows:

See attached list.

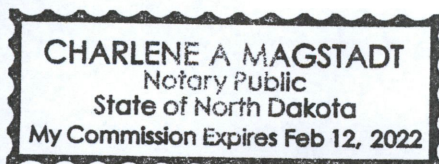
Each post office address shown is the respective addressee's last reasonably ascertainable post office address and each email address is the respective addressee's last reasonably ascertainable electronic mailing address.

Subscribed and sworn to before me
this **27th day of May, 2016**.


Notary Public

90 PU-15-797 Filed 05/27/2016 Pages: 36
Affidavit of Service Reg. or E-Mail – Notice of Intent to Consider Info Not Presented at Hearing
118 PU-15-690 Filed 05/27/2016 Pages: 36
Affidavit of Service Reg. or E-Mail – Notice of Intent to Consider Info Not Presented at Hearing

SEAL



Pu-15-690 €
Pu-15-797

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City of Amidon
Mayor

Amidon ND 58620

City of Belfield
Mayor
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City of Dickinson
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City of Gladstone
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PU-15-690
PU-15-797

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Fu-15-690 &
Fu-15-797

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Pu-15-690 §

Pu-15-797

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**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Brady Wind, LLC
Brady Wind Energy Center – Stark County
Siting Application**

Case No. PU-15-690

**Brady Wind, LLC
230 kV Transmission Line – Stark County
Siting Application**

Case No. PU-15-797

**NOTICE OF INTENT TO CONSIDER INFORMATION
NOT PRESENTED AT A HEARING**

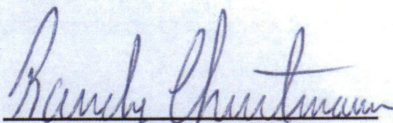
May 27, 2016

Pursuant to N.D.C.C. §28-32-25, the Public Service Commission (Commission) gives notice that it intends to consider information in its possession that was not presented as evidence at a hearing and that has been received by letters and e-mails from the parties to this action. The information is in the Commission case for Case No. PU-15-690 and PU-15-797. A copy of each document is attached. The docket numbers for Case No. PU-15-690 are: 111, 112, 113. The docket numbers for Case No. PU-15-797 are: 83, 84, 85.

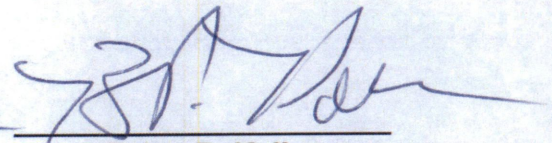
You are hereby advised that you have the right, upon written request, to examine the information or evidence and to present your own information or evidence and to cross-examine the person furnishing the information or evidence. Any such written request must be filed within ten (10) days of the date of this Notice.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay north Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

PUBLIC SERVICE COMMISSION


**Randy Christmann
Commissioner**


**Julie Fedorchak
Chairman**


**Brian P. Kalk
Commissioner**

Lein, Jerry R.

From: Brian R. Bjella <bbjella@crowleyfleck.com>
Sent: Tuesday, May 17, 2016 4:42 PM
To: Zachary E. Pelham
Cc: Lein, Jerry R.; Matthew T. Collins; Casey A. Furey
Subject: Brady Wind, Case Nos. PU-15-690 & PU-16-797:Responses of Brady Wind to Questions to Counsel
Attachments: Pelham L01 - responses to emailed questions to counsel MHAJ MH (FINAL).pdf

Mr. Pelham-

In regard to the questions set forth in your email of May 7, 2016, attached please find the responses of Brady Wind.

Thank you.
Brian Bjella

Brian R. Bjella
100 W. Broadway, Suite 250
Bismarck, ND 58501
voice 701.224.7532 fax 701.222.4853

CROWLEY FLECK
ATTORNEYS

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Brady Wind response to 7 May 2016 request for additional information

Public Service Commission
Zachary Pelham, SAAG

111 **PU-15-690** Filed: 5/17/2016 Pages: 11
Brady Wind response to 7 May 2016 request for additional information

Public Service Commission
Zachary Pelham, SAAG

Brian R. Bjella
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
bbjella@crowleyfleck.com

May 17, 2016

Mr. Zachary E. Pelham
Pearce & Durick
314 East Thayer Avenue
Bismarck, ND 58501

Dear Mr. Pelham:

In re: Brady Wind, LLC
150 MW Wind Energy Center
PSC Case No. PU-15-690

Brady Wind, LLC
230 kV Transmission Line
PSC Case No. PU-15-797

Our File No. 35-218-026

On May 7, 2016, you sent an email to counsel for Brady Wind, LLC and Concerned Citizens of Stark County. Please find Brady Wind's responses to the questions you posed below.

1. The one-mile setback for Highway 22 in the project area, was this part of the CUP granted by the county?

ANSWER: Yes. Due to comments expressed at the Stark County Planning & Zoning Commission meeting for the Dickinson Wind Project (the Stark County project that NextEra Energy Resources proposed in 2015 but was rejected by the county), during subsequent meetings with Stark County officials, and at a meeting with the mayor of Dickinson, all expressed concern of visual impact of wind turbines to the Old Red Trail, the Enchanted Highway, and other major highways leading into the City of Dickinson. County officials represented to Brady Wind that the setback of turbines off Highway 22 "protects the gateways into the community" and is of community value.

As a result of these communications, officials of Brady Wind indicated that they would voluntarily impose a one-mile setback for wind turbines from Highway 22. This commitment was included in the project presentation at the Stark County Planning &

Zoning Commission meeting for the Brady Wind Project. Please see attached an email from Steve Josephson, Stark County Planner, confirming the County's interest in a one-mile setback from Highway 22 and indicating that it would not permit siting turbines in that area.

The Conditional Use Application submitted to Stark County sets forth the one-mile setback from Highway 22, which CUP was approved. As a result, the approval from Stark County incorporates a one-mile setback from Highway 22. For Brady Wind to move turbines into the one-mile setback area, it would need to re-permit the project through Stark County, which is not possible given the December 31, 2016 deadline under the project's Power Purchase Agreement and given the County's representation that it will not allow turbines in this area.

2. On late-filed Exhibit 8, what are the turbine location/numbers for the 16 non-participating landowners where shadow flicker is anticipated to have an impact? Where are the affected inhabited dwellings of the non-participating landowners? Also, how does the potential removal of turbines 82, 83, and 84 impact shadow flicker?

ANSWER: Brady Wind has prepared an updated shadow flicker analysis as a result of the removal of turbines 82-84, which is attached hereto. This updated analysis identifies participating and non-participating landowners, and potential shadow flicker on occupied receptors. It also identifies the turbines which could potentially generate a shadow flicker at each residence. In conjunction with the map attached thereto, one can identify the receptors listed in the shadow flicker table.

The original shadow flicker analysis indicated that predicted shadow flicker at two non-participating receptors, while in compliance with the Commission's policy not to exceed 30 hours per year, did exceed 22 hours per year at one non-participating receptor and 27 hours per year at another non-participating receptor. While these shadow flicker results comply with the Commission's policy, Brady Wind has decided to drop one turbine—No. 17—and replace it with an alternate. As a result, the updated shadow flicker analysis indicates that Receptor No. 610057 will drop from 22 hours 24 minutes per year to 12 hours and 7 minutes; and that Receptor No. 610053 will drop from 27 hours 40 minutes per year to 16 hours 36 minutes.

3. Does Brady Wind understand that the bond obtained to satisfy Stark County does not equate to meeting the requirements under the PSC rules for decommissioning?

ANSWER: Yes. Brady Wind understands that it will have to comply both with the Stark County and Commission decommissioning requirements, and that the Commission has discretion to require a form of financial assurance separate from the bond to Stark County.

4. If complaints concerning noise are fielded, can an individual turbine or group of turbines be turned off for testing the noise?

ANSWER: Yes, individual turbines or groups of turbines can be turned off to test for noise.

5. Commissioner Christmann brought up Dr. Ollson's testimony concerning impact on health and that placement of a turbine within 1,000 feet of an occupied dwelling could have adverse impacts. Given the county setback requirement is 2,000 feet from an occupied structure, and the PSC's setback for a non-participating landowner's property line is 1.1 times the height of the turbine (about 500 feet), what is the company's position concerning locating turbines 1,000 feet from a non-participating owner's property line? Can turbines potentially be moved to accommodate this?

ANSWER: Initially, Brady Wind wishes to point out that for this project it will be applying the more restrictive setback requirement of Stark County, which is 2.5 times turbine rotor diameter from the property line of non-participating landowners. Given the turbine technology to be used for this project, the setback from the property line of non-participating landowners will be 845 feet. This is already farther than the Commission's required setback from the property line of a non-participating landowner, which based on the turbine height is 475 feet in this case.

In preparing its applications to Stark County and the Commission, Brady Wind applied the existing applicable regulations regarding setbacks and the turbines for this project have been sited pursuant to these regulations. To require a different setback at this stage without prior notice would be inconsistent with existing law.

Brady Wind reviewed the testimony of Dr. Chris Ollson referred to in this request. Brady Wind interprets Dr. Ollson's testimony of providing a general range (1,000 feet from a turbine) at which noise would get "anywhere close . . . to 55 decibels." Brady Wind submits that this testimony does not form the basis of determining that 1,000 feet from property lines is a setback required to protect health. Moreover, to now require a 1,000 foot distance from non-participating property lines based upon noise (dba levels) would also not be in conformance with the law, as this project has been sited to conform to the Commission's existing regulation of not to exceed 50 dba's at 100 feet from an occupied residence. Brady Wind has demonstrated through the studies submitted that this project complies with the Commission's existing rule on noise.

Brady Wind submits that applying the Stark County setback of 2.5 times rotor diameter, —845 feet from non-participating property lines—is more than adequate. In conjunction with Brady Wind's decisions to install the newly approved FAA radar lighting technology, to remove turbines 82-84 due to visual concerns, and to remove Turbine 17 due to shadow flicker effects – Brady Wind submits that this project not only complies with but exceeds all of the Commission's regulatory requirements and is protective of

public health. By its willingness to go above and beyond existing regulatory requirements, Brady Wind has affirmatively addressed concerns raised by area residents and the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. R. Bjella", written over a horizontal line.

Brian R. Bjella

bw
Enc.

Melissa,

Highway 22 is a major transportation corridor and serves as a gateway into Stark County and the City of Dickinson. It became clear during the discussion regarding the proposed Dickinson Wind Farm in the Spring of 2015 that neither the general public nor Stark County wanted wind turbines within a mile of major roadways. During the development of the Brady Wind Farm representatives of Stark County informed NextEra that locating turbines within a mile of Highway 22 would not be allowed. As a result NextEra developed a map that did not show potential turbine locations within one mile of Highway 22.

Steve

From: Hochmuth, Melissa [<mailto:Melissa.Hochmuth@nexteraenergy.com>]
Sent: Thursday, May 12, 2016 9:35 AM
To: Steven Josephson <Steven.Josephson@dickinsongov.com>
Subject: Brady Wind - Highway Setback

Steve,

As you are aware, the Public Service Commissioners asked during the workshop last Friday about the 1-mile setback for turbines off Highway 22. We knew protection of major road corridors into Stark County and into Dickinson was of importance to the County from a community value and visual aesthetics perspective when we first started developing this project. While it was not included as a condition of our Conditional Use Permit, we committed to a 1-mile setback off Highway 22 during initial negotiations with the County for the project, and the layout that was approved by the County as part of our CUP included that 1-mile setback for turbines. Can you please confirm the importance of the corridor to the County, and the request for the project to use a 1-mile setback for turbines?

1

Thank you,

Melissa Hochmuth
Project Director
NextEra Energy Resources
561.694.4638
Melissa.Hochmuth@nee.com



TO: NextEra Energy Resources, LLC
 FROM: Tetra Tech, Inc
 DATE: May 17, 2016
 SUBJECT: Brady I Wind Energy Center – Shadow Flicker Analysis Predictions

Tetra Tech, Inc. was contracted by Brady Wind, LLC, a wholly-owned, indirect subsidiary of NextEra Energy Resources, LLC (NextEra), to analyze predicted shadow flicker hours/year at occupied receptors from the proposed Brady Wind Energy Center. **Table 1** shows shadow flicker impact predictions for occupied receptors based on the 4/4/16 Brady I turbine array with turbine 17 removed and Alt2 activated. The table also identifies participation status of receptor, and main turbines impacting receptor. Receptor and turbine locations are shown in the attached **Figure 1**.

Table 1: Predicted Shadow Flicker Hours/Year at Occupied Receptors

Receptor ID	Is Receptor a Project Participant?	Predicted Shadow Flicker (Hours per Year) - including Alternate Turbines	Predicted Shadow Flicker (Hours per Year) - Primary Turbines Only	Main Turbines Impacting Receptor
610121	Yes	52:56:00	52:56:00	34,37,36,35,38
880001	Yes	44:55:00	44:55:00	70,72,71,74
501068	Yes	21:59:00	21:59:00	50,46,45
610181	Yes	21:35:00	21:35:00	39,40
610049	Yes	21:33:00	21:33:00	22,15,21,16,Alt2
610042	Yes	18:27:00	18:27:00	22,15,21,18
610045	Yes	18:24:00	18:24:00	22,15,21,18
501059	Yes	17:57:00	17:57:00	66,68,65,64,69
610185	Yes	16:56:00	16:56:00	39,40
610053	No	16:36:00	16:36:00	18,8,14
501012	No	13:07:00	13:07:00	70,82,85
610057	No	12:07:00	12:07:00	18,8,14
501040	Yes	12:00:00	12:00:00	66,64,68,65
610031	No	10:52:00	10:52:00	5,7,15,6,18
610098	No	10:38:00	10:38:00	32,33,21
610009	No*	9:50:00	9:50:00	3,4,5
420119	No	8:36:00	8:36:00	8,14,18
501050	No*	7:50:00	7:50:00	64,68,65

Receptor ID	Is Receptor a Project Participant?	Predicted Shadow Flicker (Hours per Year) - including Alternate Turbines	Predicted Shadow Flicker (Hours per Year) - Primary Turbines Only	Main Turbines Impacting Receptor
501030	No	6:58:00	6:58:00	71,72,73
610094	No	5:09:00	3:27:00	24,22,Alt1
610111	Yes	4:13:00	4:13:00	34
610014	No*	3:56:00	3:56:00	4,5
610021	No*	3:54:00	3:54:00	8
900070	No	3:36:00	3:36:00	84,83
610139	No	3:35:00	3:35:00	46,47
501037	No	2:17:00	2:17:00	84
610025	No*	1:20:00	1:20:00	10
501065	No	0:59:00	0:59:00	47
420002	No	0:00:00	0:00:00	NA
420023	No	0:00:00	0:00:00	NA
420029	No	0:00:00	0:00:00	NA
420039	No	0:00:00	0:00:00	NA
420047	No	0:00:00	0:00:00	NA
420051	No	0:00:00	0:00:00	NA
420065	No	0:00:00	0:00:00	NA
420069	No	0:00:00	0:00:00	NA
420076	No	0:00:00	0:00:00	NA
420089	No *	0:00:00	0:00:00	NA
420090	No	0:00:00	0:00:00	NA
420100	No	0:00:00	0:00:00	NA
420108	No	0:00:00	0:00:00	NA
420116	No	0:00:00	0:00:00	NA
420117	No	0:00:00	0:00:00	NA
500002	No	0:00:00	0:00:00	NA
500006	No	0:00:00	0:00:00	NA
500012	No	0:00:00	0:00:00	NA
500018	No	0:00:00	0:00:00	NA
500022	No*	0:00:00	0:00:00	NA
500028	No*	0:00:00	0:00:00	NA
500035	No*	0:00:00	0:00:00	NA
500039	No	0:00:00	0:00:00	NA
500053	No	0:00:00	0:00:00	NA
500059	No	0:00:00	0:00:00	NA
500064	No	0:00:00	0:00:00	NA

Receptor ID	Is Receptor a Project Participant?	Predicted Shadow Flicker (Hours per Year) - including Alternate Turbines	Predicted Shadow Flicker (Hours per Year) - Primary Turbines Only	Main Turbines Impacting Receptor
501000	No*	0:00:00	0:00:00	NA
501019	No	0:00:00	0:00:00	NA
501022	Yes	0:00:00	0:00:00	NA
501073	No*	0:00:00	0:00:00	NA
501081	No*	0:00:00	0:00:00	NA
501082	No	0:00:00	0:00:00	NA
501085	No	0:00:00	0:00:00	NA
501096	No	0:00:00	0:00:00	NA
501099	No	0:00:00	0:00:00	NA
501104	No	0:00:00	0:00:00	NA
501108	No	0:00:00	0:00:00	NA
501118	No*	0:00:00	0:00:00	NA
501126	No	0:00:00	0:00:00	NA
501131	No	0:00:00	0:00:00	NA
501138	No	0:00:00	0:00:00	NA
501141	No	0:00:00	0:00:00	NA
501147	No	0:00:00	0:00:00	NA
501156	No*	0:00:00	0:00:00	NA
501162	No	0:00:00	0:00:00	NA
501165	No	0:00:00	0:00:00	NA
501168	No	0:00:00	0:00:00	NA
501172	No*	0:00:00	0:00:00	NA
501173	No	0:00:00	0:00:00	NA
501174	No	0:00:00	0:00:00	NA
501175	No	0:00:00	0:00:00	NA
501176	No*	0:00:00	0:00:00	NA
610001	No*	0:00:00	0:00:00	NA
610084	No	0:00:00	0:00:00	NA
610089	No*	0:00:00	0:00:00	NA
610102	No*	0:00:00	0:00:00	NA
610108	No*	0:00:00	0:00:00	NA
610149	No	0:00:00	0:00:00	NA
610170	No	0:00:00	0:00:00	NA
800308	No	0:00:00	0:00:00	NA
800311	No	0:00:00	0:00:00	NA

Receptor ID	Is Receptor a Project Participant?	Predicted Shadow Flicker (Hours per Year) - including Alternate Turbines	Predicted Shadow Flicker (Hours per Year) - Primary Turbines Only	Main Turbines Impacting Receptor
800317	No	0:00:00	0:00:00	NA
811201	No	0:00:00	0:00:00	NA
811205	No	0:00:00	0:00:00	NA
811210	No	0:00:00	0:00:00	NA
811287	No	0:00:00	0:00:00	NA
811290	No	0:00:00	0:00:00	NA
900002	No	0:00:00	0:00:00	NA
900007	No	0:00:00	0:00:00	NA
900011	No*	0:00:00	0:00:00	NA
900015	No	0:00:00	0:00:00	NA
900019	No	0:00:00	0:00:00	NA
900027	No	0:00:00	0:00:00	NA
900031	No	0:00:00	0:00:00	NA
900035	No	0:00:00	0:00:00	NA
900039	No	0:00:00	0:00:00	NA
900047	No	0:00:00	0:00:00	NA
900053	No	0:00:00	0:00:00	NA
900059	No	0:00:00	0:00:00	NA

* Denotes receptor categorized as Not Participating because the receptor is located on land that is not covered by an easement. However, the landowner at these receptor are participants of the Project on property located elsewhere in the Project Area.



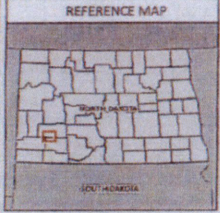
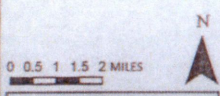
NEXTERA ENERGY
 RESOURCES, LLC
 BRADY WIND PROJECT
 STARK COUNTY
 NORTH DAKOTA

FIGURE 1
 TURBINE AND RECEPTOR
 LOCATIONS

MAY 2016

- Proposed Turbine Array (4/4/2016)*
- GE Xle 1.715-103 Turbine
 - GE Xle 1.715-103 Turbine (Alt)
 - GE Xle 1.79-100 Turbine
- Receptors
- Occupied
 - Not Occupied

*Revised 4/4/2016 array shown with turbine #17 removed and Alt 2 activated.



Lein, Jerry R.

From: Matthew T. Collins <MCollins@fwhtlaw.com>
Sent: Wednesday, May 25, 2016 8:45 PM
To: Zachary E. Pelham
Cc: Lein, Jerry R.; Brian R. Bjella (bbjella@crowleyfleck.com); cfurey@crowleyfleck.com; 085892_001 _ Stark County_ ND _Concerned Citizens of Stark County_ North Dakota_ a non_profit corp__ 10_ E_Mails_Voicemails _085892_001_
Subject: RE: Brady Wind, Case Nos. PU-15-690 & PU-16-797 [IWOV-Active.FID1141519]
Attachments: 5.25.16 ltr. to Z. Pelham.pdf

Attached.

Matthew T. Collins

Attorney at Law

Fabyanske, Westra, Hart & Thomson, P.A.

Direct: 612.359.7610 | Firm: 612.359.7600 | Fax: 612.359.7602

333 South Seventh Street, Suite 2600

Minneapolis, Minnesota 55402

mcollins@fwhtlaw.com

fwhtlaw.com

[vCard](#)

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Subject: Brady Wind, Case Nos. PU-15-690 & PU-16-797 [IWOV-Active.FID1141519]

Mr. Pelham –

Please see the attached letter.

Thank you,

Matt Collins

Matthew T. Collins

Attorney at Law

Fabyanske, Westra, Hart & Thomson, P.A.

Direct: 612.359.7610 | Firm: 612.359.7600 | Fax: 612.359.7602

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CCSC Reply to Brady Wind's 17 May 2016 Response
Public Service Commission
Zachary Pelham, SAAG

112 PU-15-690 Filed 05/25/2016 Pages: 5
CCSC Reply to Brady Wind's 17 May 2016 Response
Public Service Commission
Zachary Pelham, SAAG

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**FABYANSKE
WESTRA
HART &
THOMSON**

May 25, 2016

VIA E-MAIL

Zachary E. Pelham
Pearce & Durick
314 East Thayer Avenue
Bismarck, ND 58501

Re: Brady Wind, LLC, Case Nos. PU-15-690 and PU-15-797

Dear Mr. Pelham:

On May 7, 2016, you asked whether Intervenor Concerned Citizens of Stark County ("CCSC") would be submitting a late filed exhibit regarding usage of drones in and around wind farms. CCSC will not be submitting a late filed exhibit on this topic.

On May 17, 2016, Brian Bjella submitted a response to the questions you posed to Brady Wind, LLC ("Brady Wind"). This letter addresses Mr. Bjella's May 17, 2016, letter.

First, Brady Wind again cites to the alleged "December 31, 2016, deadline under the project's Power Purchase Agreement." (See page 2 of the May 17, 2016 letter.) CCSC objects to the reference to the Power Purchase Agreement without the Public Services Commission ("PSC") having the opportunity to independently verify that the December 31, 2016, deadline exists and whether there are any exceptions to the deadline contained in the agreement. The PSC should require that Brady Wind submit the Power Purchase Agreement so that it can verify the representations that the Agreement contains such a deadline. The verification of the alleged deadline and whether any exceptions exists would allow the PSC to decide whether it is feasible for Brady Wind to move some of the turbines to alleviate the impact the project has on non-participating landowners.

Second, CCSC objects to the "updated shadow flicker analysis" provided with the May 17 letter. Brady Wind did not seek leave to file this exhibit. CCSC has been provided no opportunity to verify or challenge the contents of the "updated shadow flicker analysis." The accompanying map to the "updated shadow flicker analysis" is not sufficiently legible to critically evaluate the contents or representations in it. There is no meaningful way to distinguish structures that are occupied nor not occupied, much less determine their proximity to the wind turbines. CCSC requests that the PSC strike the "updated shadow flicker analysis" from the record or reopen the hearing pursuant to N.D.C.C. § 69-02-06-01 so that CCSC may have the opportunity to question Brady Wind on this new evidence it is purporting to have the PSC consider. If the PSC decides to consider this new information, CCSC requests the opportunity to file a petition to reopen the hearing.

Finally, in response to question no. 5, Brady Wind's May 17 letter seems to suggest that it would be illegal or somehow improper for the PSC to condition issuance of the certificate of site compatibility on increased or greater set back requirements for non-participating owner's property lines. North Dakota law does not support Brady Wind's position in this regard.

In *Application of Otter Tail Power Co.*, 169 N.W.2d 415, 419 (N.D. 1969), the North Dakota Supreme Court held that it "does not have the power to determine administrative questions which are within the purview of the Public Service Commission." The Court went on to explain the limit of its review of a decision by the PSC:

That agency alone has the authority to make this determination, and such determination will not be disturbed on appeal unless it can be shown that such decision or determination is not in accordance with the law, or that it is violation of the constitutional rights of the appellant, or that any of the provisions of the law have not been complied with in the proceedings before the agency, or that the rules or procedure of the agency have not afforded the appellant a fair hearing, or that the findings of fact made by the agency are not supported by the evidence, or that the conclusions and decision of the agency are not supported by its findings of fact.

Id.

North Dakota Century Code Chapter 49-22, Energy Conversion and Transmission Facility Siting Act grants the PSC broad discretion to make conditions for the issuance of a certificate of site compatibility. For example, N.D.C.C. § 49-22-02 states that it is the intent of the legislature that the PSC issue certificates that "minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion." Requiring that Brady Wind meet certain conditions for the certificate, including greater set back requirements, is consistent with the legislative authority.

Section 49-22-07(1) provides that Brady Wind may not begin construction of the project until it obtains a certificate and Brady Wind must comply "with the certificate or permit and any terms, conditions, or modifications of the certificate or permit." N.D.C.C. § 49-22-07(1) (emphasis added). Because the legislature specifically stated that a certificate and any "terms, conditions, or modifications of the certificate" must be complied with by Brady Wind, the PSC has the authority to condition the certificate with compliance with greater set back requirements.

Section 49-22-08(5) of the North Dakota Century Code provides that the PSC must approve or deny Brady Wind's application based on, among other things, the factors identified in N.D.C.C. § 49-22-09. Section 49-22-08(5) states the following:

The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of

site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility.

N.D.C.C. § 49-22-08(5).

Section 49-22-09 of the North Dakota Century Code provides that the PSC shall use the eleven "considerations" identified in the statute, but is not limited to the eleven considerations when evaluating and designating a site. Section 49-22-09 provides: "The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes" N.D.C.C. § 49-22-09 (emphasis added). Thus, the legislature has expressly stated that the PSC may consider other factors – such as strong public opposition and population density – when deciding whether to approve an application. Given the PSC broad authority to condition the approval of an application and issue a certificate, the PSC may condition such approval on fulfillment of any conditions that the PSC determines will "minimize adverse human and environmental impact" N.D.C.C. § 49-22-02.

CCSC remains opposed to the current configuration of the proposed wind farm by Brady Wind. The application has failed to provide the required information to satisfy the statutory requirements and does not adequately address the objections of the non-participating landowners. Given the previously approved wind farms by the PSC, the proposed wind farm by Brady Wind is not compatible with its current location in Stark County based on the objections of the nonparticipating landowners and residents of Stark County as documented in the record.

Very truly yours,



Matthew T. Collins

MTC/

cc: Jerry Lein (via e-mail)
Brian Bjella (via e-mail)

Lein, Jerry R.

From: Brian R. Bjella <bbjella@crowleyfleck.com>
Sent: Thursday, May 26, 2016 1:06 PM
To: Zachary E. Pelham
Cc: Lein, Jerry R.; Matthew T. Collins; Casey A. Furey
Subject: Brady Wind: Case No. PU-15-690--Response of Brady Wind
Attachments: Pelham Letter in response to work session held by PSC on 5-19-16.PDF

Mr. Pelham-

Attached please find the response of Brady Wind to the requests for information made at the work session on May 19.

Please let me know should you have any questions. Thank you.

Brian Bjella

Brian R. Bjella

100 W. Broadway, Suite 250

Bismarck, ND 58501

voice 701.224.7532 fax 701.222.4853

CROWLEY | FLECK PLLP
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Brady Wind response to Work Session information requests
Public Service Commission
Zachary Pelham, SAAG

113 PU-15-690 Filed 05/26/2016 Pages: 7
Brady Wind response to Work Session information requests
Public Service Commission
Zachary Pelham, SAAG

Brian R. Bjella
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
bbjella@crowleyfleck.com

May 26, 2016

Mr. Zachary E. Pelham
Pearce & Durick
314 East Thayer Avenue
Bismarck, ND 58501

Dear Mr. Pelham:

In re: Brady Wind, LLC
150 MW Wind Energy Center
PSC Case No. PU-15-690

Our File No. 35-218-026

I am writing in regard to the work session held by the Commissioners on May 19, 2016. Additional information was requested on the following matters:

1. Shadow flicker effect to non-participants who testified at the Public Service Commission public hearing on March 30, 2016.

A request was made to provide the shadow flicker effect upon non-participants who testified against the project at the Public Service Commission public hearing on March 30, 2016.

Brady Wind identified three people (representing two residences) that are responsive to this request. They are Autumn and Farren Richard and Patrick Praus. The shadow flicker effect to the residence of Autumn and Farren Richard is modeled to be 2 hours 17 minutes per year (Turbine 84). The shadow flicker effect to the residence of Patrick Praus is modeled to be 3 hours 36 minutes per year (Turbines 83 – 84). Brady Wind wishes to point out that as a result of the testimony at the public hearing of these three non-participants, the Commission requested that the turbines originally numbered 82-84 be removed. Those turbines were removed, and the results set forth above reflect the minimal shadow flicker effect remaining. Please note that the turbines have been renumbered.

Attached as Exhibit A is a map which depicts the location of the residences and identified shadow flicker effect.

Brady Wind also observes that the shadow flicker impact analysis conservatively assumes a scenario in which natural elements, such as trees, are not factored in, which can greatly reduce any shadow flicker effect.

Brady Wind also wishes to point out that only two residences exceed the Commission's shadow flicker policy of more than 30 hours per year, and both of these residences are on land that is participating in the wind farm. The shadow flicker effect to most participants is much less, ranging from 21 hours 10 minutes per year to 3 hours 56 minutes per year. In addition, the shadow flicker effect to the vast majority of residences on non-participating land is 0 hours per year, and many of the landowners of these residences own property elsewhere in the project area that is participating in the wind farm

2. Review of turbines located within 1,000 feet of a non-participant's property line.

A request was also made to identify turbines less than 1,000 feet from non-participating landowners' property lines. Brady Wind has identified 14 turbines that are located between 845 feet (Stark County setback) and 1,000 feet of a non-participant's property line. This number was originally 17 turbines, but in recent days, Brady Wind has negotiated participation agreements with adjoining landowners for three of the originally identified turbines.

Brady Wind first submits that the project as originally filed is in full compliance with both Stark County and the Public Service Commission laws and regulations regarding the siting of wind farms. In particular, Brady Wind's current turbine locations comply with the requirement in the Commission's regulations with respect to a noise level of no more than 50 dBA within 100 feet of an occupied residence. N.D. Admin. Code § 69-06-08-01(4). Furthermore, Brady Wind's current turbine locations comply both the Commission's and Stark County's regulations with respect to non-participating property lines. Stark County's regulations are more conservative than the Commission's, as Stark County requires turbines to be set back at least 2.5 times the turbine rotor diameter, or 845 feet for the turbines proposed for this project. To require Brady Wind to deviate from these regulations would not be in conformance with the law and would also adversely affect the property rights of the participants in the wind farm who wish to have a turbine on their land.

Further, the testimony of Dr. Chris Ollson does not form the basis for determining that 1,000 feet from a non-participating property line is a necessary setback required to protect public health. Brady Wind reiterates that the current design of the project already protects public health by complying not only with the Commission's requirements but also with the Stark County zoning ordinance that requires that no turbine be located closer than 2,000 feet from an occupied residence. It would be inconsistent with these existing Commission and county requirements to require siting based on potential future residences near property lines, as it is uncertain at this time whether a neighboring non-participating landowner would ever build a habitable structure on his or her property that could potentially be within 1,000 feet of a turbine. In addition, Stark County zoning regulation 3.7(3) states that "the minimum setback for buildings from the centerline of all section lines and the center line of county roads shall be one hundred twenty-five

(125) feet," so in these instances a landowner could not build a house in close proximity to such a property line.

Next, Brady Wind wishes to point out that, in many cases, it may not be possible to simply move a turbine the exact distance needed to reach a 1,000 foot boundary. For example, if a turbine is located 950 feet from a non-participant's property line, moving the turbine only 50 feet may not always be an option. This is due to the topography of the area and the necessity for a flat surface to construct the turbine, as well as other exclusion, avoidance and setback considerations; thus, it is often necessary to move a turbine more than the minimal requisite distance to get to a point at least 1,000 feet from a non-participant's property line. By way of specific example, one of the 14 turbines is located 901 feet from a non-participant's property line, or just 99 feet short of the 1,000 foot boundary. However, in order to relocate this turbine to a suitable location, Brady Wind would have to move the turbine 168 feet. Another turbine is located 903 feet from a non-participant's property line, or just 97 feet from the 1,000 foot boundary, but would have to be moved 201 feet to find a suitable turbine location.

Nevertheless, in order to be responsive to the Commission's expressed preferences, of the 14 turbine locations which are located between 845 feet and 1,000 feet of a non-participant's property line, Brady Wind has identified 11 turbines which can be moved to get beyond the 1,000 foot line. Brady Wind is unable to adjust the location of three turbines because the required moves would be more than 100 feet, which exceed the tolerance for movement allowed by the Federal Aviation Administration (FAA). This project, as sited in accordance with all Commission and Stark County regulations, has already received Determinations of No Hazard for all turbine locations from the FAA. If these three turbines are moved more than 100 feet, their new locations would have to be re-submitted to the FAA. Based on the Company's recent experience with the FAA, approval of new turbine locations can take months to receive, and approval is not guaranteed. Without approval, Brady Wind cannot construct these turbines.

The three turbines which cannot be moved do not impact the shadow flicker effect to Autumn and Farren Richard or Patrick Praus.

Attached hereto as Exhibit B is a map which depicts the 14 turbines, which is color coded to show the 11 turbines which Brady Wind is able to move and the three it is not able to move. Again, please note that the turbines have been renumbered.

Brady Wind respectfully requests that the Commission recognize the extraordinary efforts Brady Wind has made to accommodate the concerns of non-participants and Commissioners by removing Turbines 82-84 due to landowner concerns expressed at the public hearing, removing Turbine 17 due to shadow flicker effects, and now the relocation of 11 turbines so as to locate them at least 1,000 feet from a non-participant's property line.

Brady Wind respectfully requests that an order be issued approving this project as modified.

Very truly yours,

A handwritten signature in black ink, appearing to read "B.R. Bjella", written in a cursive style.

Brian R. Bjella

bw

Enc.

cc:

Jerry Lein

Matthew Collins

Exhibit A

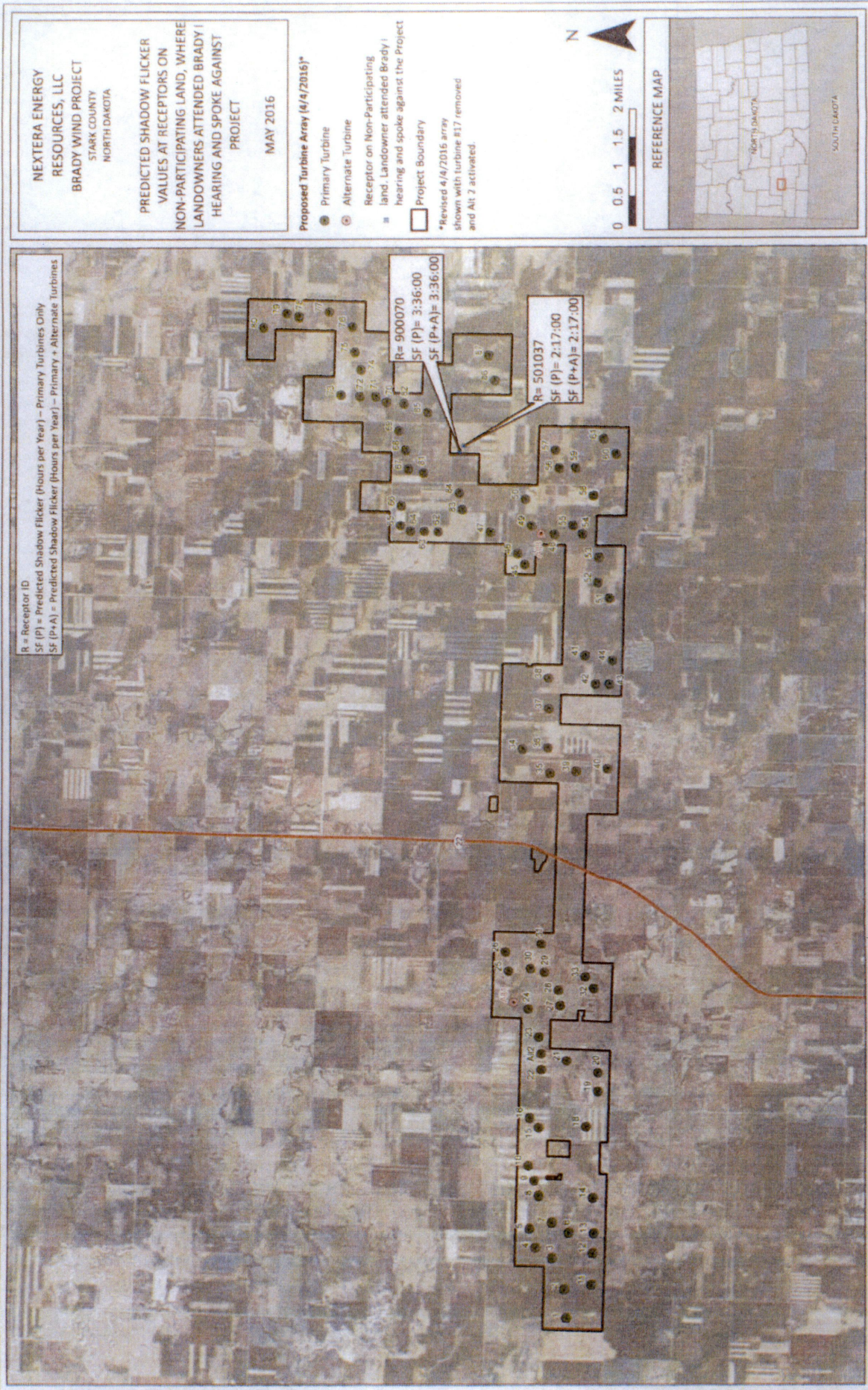
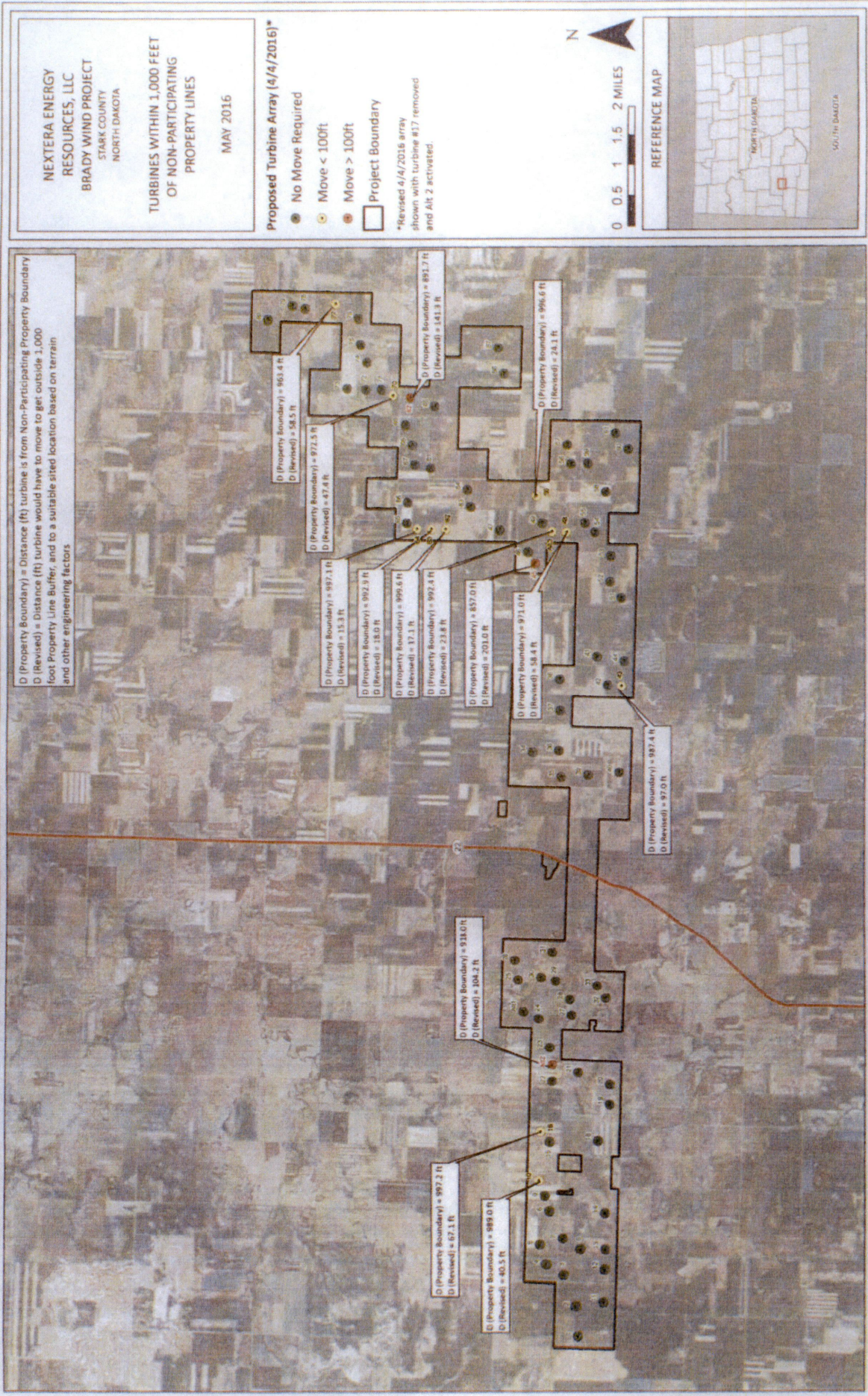


Exhibit B



Lein, Jerry R.

From: Brian R. Bjella <bbjella@crowleyfleck.com>
Sent: Thursday, May 26, 2016 1:06 PM
To: Zachary E. Pelham
Cc: Lein, Jerry R.; Matthew T. Collins; Casey A. Furey
Subject: Brady Wind: Case No. PU-15-690--Response of Brady Wind
Attachments: Pelham Letter in response to work session held by PSC on 5-19-16.PDF

Mr. Pelham-

Attached please find the response of Brady Wind to the requests for information made at the work session on May 19.

Please let me know should you have any questions. Thank you.

Brian Bjella

Brian R. Bjella

100 W. Broadway, Suite 250

Bismarck, ND 58501

voice 701.224.7532 fax 701.222.4853

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Brian R. Bjella
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
bbjella@crowleyfleck.com

May 26, 2016

Mr. Zachary E. Pelham
Pearce & Durick
314 East Thayer Avenue
Bismarck, ND 58501

Dear Mr. Pelham:

In re: Brady Wind, LLC
150 MW Wind Energy Center
PSC Case No. PU-15-690

Our File No. 35-218-026

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Further, the testimony of Dr. Chris Ollson does not form the basis for determining that 1,000 feet from a non-participating property line is a necessary setback required to protect public health. Brady Wind reiterates that the current design of the project already protects public health by complying not only with the Commission's requirements but also with the Stark County zoning ordinance that requires that no turbine be located closer than 2,000 feet from an occupied residence. It would be inconsistent with these existing Commission and county requirements to require siting based on potential future residences near property lines, as it is uncertain at this time whether a neighboring non-participating landowner would ever build a habitable structure on his or her property that could potentially be within 1,000 feet of a turbine. In addition, Stark County zoning regulation 3.7(3) states that "the minimum setback for buildings from the centerline of all section lines and the center line of county roads shall be one hundred twenty-five

(125) feet," so in these instances a landowner could not build a house in close proximity to such a property line.

Next, Brady Wind wishes to point out that, in many cases, it may not be possible to simply move a turbine the exact distance needed to reach a 1,000 foot boundary. For example, if a turbine is located 950 feet from a non-participant's property line, moving the turbine only 50 feet may not always be an option. This is due to the topography of the area and the necessity for a flat surface to construct the turbine, as well as other exclusion, avoidance and setback considerations; thus, it is often necessary to move a turbine more than the minimal requisite distance to get to a point at least 1,000 feet from a non-participant's property line. By way of specific example, one of the 14 turbines is located 901 feet from a non-participant's property line, or just 99 feet short of the 1,000 foot boundary. However, in order to relocate this turbine to a suitable location, Brady Wind would have to move the turbine 168 feet. Another turbine is located 903 feet from a non-participant's property line, or just 97 feet from the 1,000 foot boundary, but would have to be moved 201 feet to find a suitable turbine location.

Nevertheless, in order to be responsive to the Commission's expressed preferences, of the 14 turbine locations which are located between 845 feet and 1,000 feet of a non-participant's property line, Brady Wind has identified 11 turbines which can be moved to get beyond the 1,000 foot line. Brady Wind is unable to adjust the location of three turbines because the required moves would be more than 100 feet, which exceed the tolerance for movement allowed by the Federal Aviation Administration (FAA). This project, as sited in accordance with all Commission and Stark County regulations, has already received Determinations of No Hazard for all turbine locations from the FAA. If these three turbines are moved more than 100 feet, their new locations would have to be re-submitted to the FAA. Based on the Company's recent experience with the FAA, approval of new turbine locations can take months to receive, and approval is not guaranteed. Without approval, Brady Wind cannot construct these turbines.

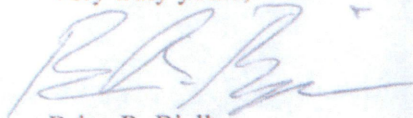
The three turbines which cannot be moved do not impact the shadow flicker effect to Autumn and Farren Richard or Patrick Praus.

Attached hereto as Exhibit B is a map which depicts the 14 turbines, which is color coded to show the 11 turbines which Brady Wind is able to move and the three it is not able to move. Again, please note that the turbines have been renumbered.

Brady Wind respectfully requests that the Commission recognize the extraordinary efforts Brady Wind has made to accommodate the concerns of non-participants and Commissioners by removing Turbines 82-84 due to landowner concerns expressed at the public hearing, removing Turbine 17 due to shadow flicker effects, and now the relocation of 11 turbines so as to locate them at least 1,000 feet from a non-participant's property line.

Brady Wind respectfully requests that an order be issued approving this project as modified.

Very truly yours,

A handwritten signature in blue ink, appearing to read "B.R. Bjella". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brian R. Bjella

bw
Enc.

cc: Jerry Lein
Matthew Collins

Exhibit A

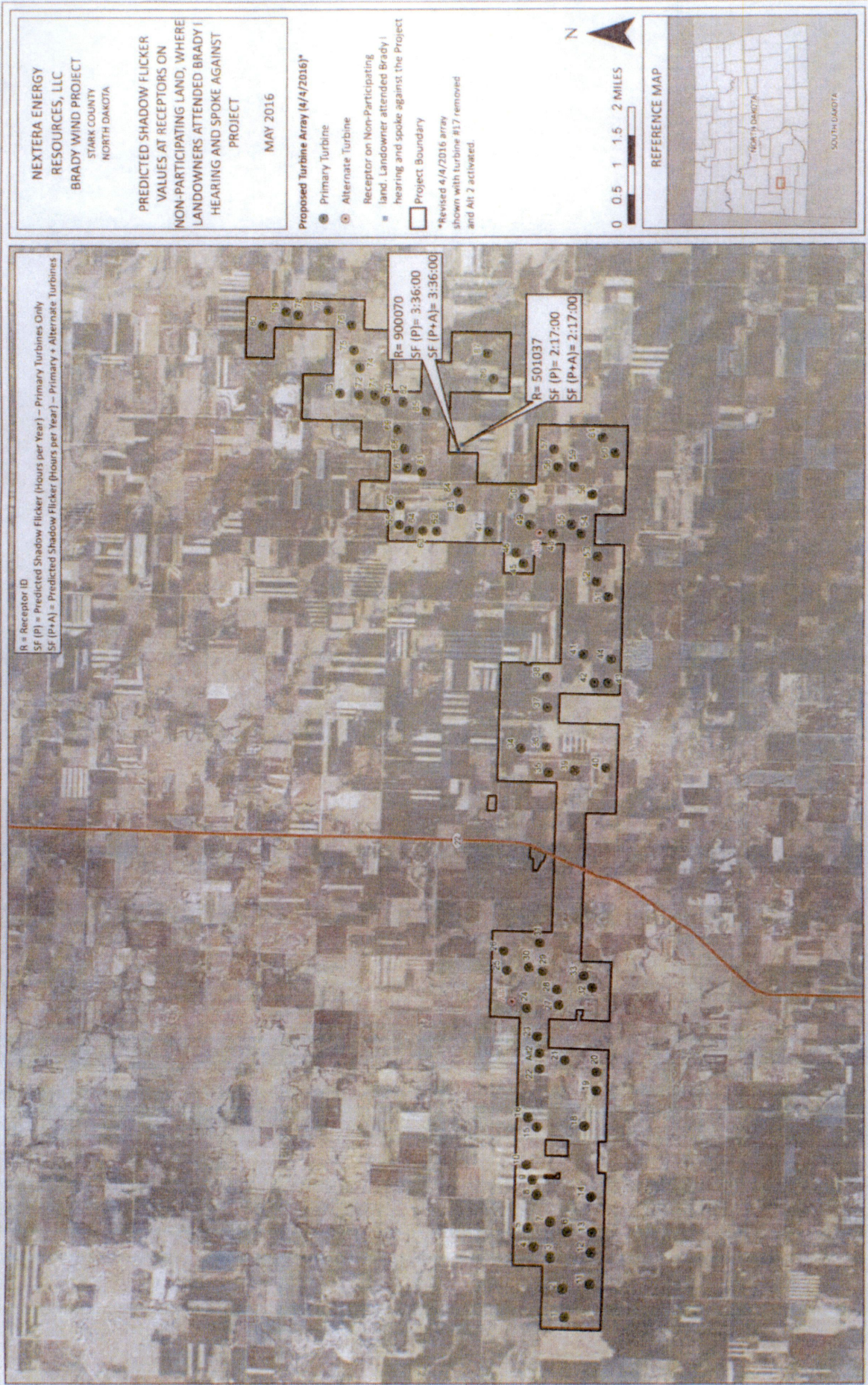


Exhibit B

